IN THE HIGH OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(*Special Original Jurisdiction*)

MONDAY, THE THIRD DAY OF SEPTEMBER
TWO THOUSAND AND SSEVEN

P R E S E N T

THE HON'BLE SRI JUSTICE P.S. NARAYANA

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WRIT PETITION No.10090 of 2007

Between:

M/s. Rayancha Prabhakar,
Represented by its Managing Partner,
Takur Kiran Singh … Petitioner

Versus

The Commissioner of Civil Supplies,
Andhra Pradesh, Hyderabad & Ors. … Respondents

Counsel for the Petitioner: **Sri A. Prabhakar Rao (35)**

Counsel for the Respondents: **GP for Civil Supplies**
Sri PV Sanjay Kumar

THE HONOURABLE SRI JUSTICE P. S. NARAYANA

WP.NO.10090 of 2007

O R D E R

1. Heard Sri A.Prabhakar Rao, learned counsel representing the writ petitioner, learned Govt. Pleader for Civil Supplies and also Sri P.V. Sanjay Kumar.

2. This Court ordered notice before admission on 02-7-2007 and pending further orders, this court granted interim suspension of the impugned order, dated 02-4-2007 provided on the date of the impugned order no proceedings were contemplated under clause 28 (1) of the AP Petroleum Products (Licensing and Regulation of Supplies) Order, 1980.

It is stated that in pursuance of the interim order, the suspension order had been revoked on 07-7-2007.

3. The writ petition is filed to declare the order dated 02-4-2007 in Proceedings No.G3/381/2007 issued by the second respondent as illegal, arbitrary and as it was passed contrary to the provisions of A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980 and in contrary to the circular order dated 10-4-1991 issued by the first respondent and to pass such other suitable orders.

4. The writ petitioner pleaded that the petitioner was granted

license in wholesale kerosene in the year 1981 and the said license was renewed from time to time and the license had been renewed upto 31-12-2008. The petitioner had been distributing kerosene to the retail kerosene dealer, fair price shop dealer in accordance with allotment proceedings issued by the respondents from time to time and maintaining records truly and correct. There was no complaint against the petitioner for the last 27 years in relation to distribution of kerosene and maintenance of records.

5. It is also stated that the petitioner was permitted to store kerosene in house bearing No. 4-44, sy.no.39, Dharur village of Jagital Mandal, Karimnagar district. The officials of Roads and Buildings Department constructing a bridge by demolishing the existing bridge, which is located very near to the authorized licensed premises of the petitioner. Due to construction of the bridge, the petitioner was not having any access to approach the authorized premises. Therefore, the petitioner after due intimation to the third respondent had taken premises bearing no.5-4-79, which is located in the same area for the purpose of storage of kerosene. On 23-3-2007 while the petitioner was unloading

kerosene through lorry tanker bearing Regdn.No.AAR-6117 in premises bearing no.5-4-79 the third respondent visited the spot and seized kerosene and tanker on the ground that the petitioner was unloading kerosene in the premises other than the authorized one under the license and it appears a report seems to have been submitted to the second respondent for initiation of action according to law.

6. It is stated that the second respondent basing on the report submitted by the third respondent dated 23-3-2007 suspended the license of the petitioner by exercising powers under Clause 28 (2) of A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980, as such the impugned order dated 02-4-2007 is liable to be set aside as it was passed contrary to the provisions of clause 28 of the A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980.

7. It is stated that clause 28 of the A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980 confers powers on the licensing authority to suspend the license, registration card, supply card by way of punishment or cancel the

licence. If it is proved that the licensee contravene the provisions of the A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980 and sub-clause 2 of clause 28 of the A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980 confers power on the licensing authority to suspend the licence pending enquiry under sub-clause-1 of clause 28 of the A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980. The licensing authority has no power to place the licence under suspension by exercising powers under sub-clause 2 of clause 28 of the A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980 without initiating enquiry under sub-clause-1 of clause 28 of the A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980. The Division Bench of this Court had an occasion to decide the scope and ambit of clause 28 of the A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980 in a decision in **THE COMMISSIONER OF CIVIL SUPPLIES, GOVT.OF AP HYDERABAD AND ORS. V/s. RADHA AUTOMOBILES, HYDERABAD, REPRESENTED BY ITS MANAGING PARTNER, T. NARENDRA KUMAR**[1], wherein it was held that the suspension of licence

cannot be resorted to under clause 28 (2) of the A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980 without initiating the proceedings under sub-clause (1) of Clause 28 of the A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980. Following the said judgment, this Court allowed number of writ petitions. It is further stated that the Commissioner of Civil Supplies issued a Circular CCS.Circular.Ref.No.E2/511/91, dated 10-4-1991, directing all the licensing authorities not to take action under section 28 (2) of the A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980 without issuing show cause notice under clause 28 (1) of the A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980.

8. Admittedly, the second respondent did not initiate any enquiry under sub-clause (1) of clause 28 of the A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980 nor issued notice-calling explanation from the petitioner. Thus, the order impugned in the writ petition dated 02-4-2007 passed by the second respondent is liable to be set aside, as it was passed under clause 28 of the A.P. Petroleum Products (Licensing and

Regulation of Supplies) Order, 1980 and Circular orders issued by the first respondent dated 10-4-2001.

9. It is further stated that the petitioner filed an appeal before the first respondent on 02-5-2007 along with an appeal, the petitioner filed an application seeking suspension of the impugned order dated 02-4-2007. But however, the first respondent had taken the appeal on file and rejected the application filed for suspension of the order dated 02-4-2007 and in view of the same, the petitioner approached this court by filing the present writ petition.

10. In the counter-affidavit filed by the respondents, it was stated that it is true that the petitioner was permitted to store kerosene in H.No.4-44, survey no.39 Darur village of Jagtial Mandal in Karimnagar district. It is stated that the petitioner has not intimated to the officials concerned seeking prior permission for change of place of business, when the officials of Roads and Buildings Department were constructing a bridge. The contention of the petitioner that after due intimation to the third respondent, i.e., Tahsildar Jagtial, the petitioner had taken premises bearing no.5-4-70 Vanjariwada, Jagtial for storage of kerosene is not

correct. The Tahsildar is not empowered to allow the wholesale kerosene dealer to permit either to change the place of business or storage premises. Moreover the Tahsildar, i.e., the third respondent has booked the case, after receiving information that the kerosene was being diverted and was being unloaded in barrels kept in an un-authorised private house bearing no.5-4-79, Vanjariwada, Jagtial from tanker bearing No.AER-6117 pertaining to the petitioner. The Joint Collector is the licensing authority. The wholesale kerosene dealer should carry on the business in premises as mentioned in conditions of the license. In the license the petitioner was permitted top carry on the business in H.No.4-6-82 Gunj Road Jagtial, similarly, he was permitted to store the kerosene in H.No.4-44 Jagital-Karimnagar Road. Therefore, the contention of the petitioner that he has informed the Tahsildar and unloading kerosene oil at an unauthorized place i.e., H.No.5-4-79, Vanjariwada, Jagtial is not correct.

11. It is also further stated that after receiving report from the third respondent, i.e., Tahsildar, Jagtial, the license of the petitioner was placed under suspension, pending enquiry under

clause 28 (2) of the A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980, since the third respondent reported that the licensee was unloading the kerosene in the unauthorized premises, i.e., 5-4-79, Vanjariwada, Jagtial. The averments mentioned in the affidavit that the second respondent has not initiated proceedings under clause 28 (1) of the A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980 is not correct. The second respondent contemplated action as required under clause 28 (1) by issuing a show cause notice on 7-6-2007 and the same was served to the petitioner on 1-6-2007. The petitioner had submitted written explanation through Sri K.Mahender, Advocate on 16-6-2007. Clause 28 (2) conferred jurisdiction upon the licensing authority to pass suspension orders, pending enquiry provided action had already been initiated pending against the licensee under sub-clause (1) of clause 28 of the Control Orders. It is not correct to state that no action is initiated against the licensee under clause 28 (1).

12. It is also stated that after conducting detailed enquiry under clause 28 (1) the licensing authority has got powers to

suspend/cancel the license. Sub-clause (2) of clause 28 of the A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980 confers powers on the licensing authority to suspend the license pending enquiry. Since, the petitioner has contravened clause 3 (1), (2), (3) and 12 (1) (iii) of the A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980, the license was suspended as per clause 28 (2) of the A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980 and show cause notice was issued to the petitioner as required under clause 28 (1) of the A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980. Therefore, the contention that the licensing authority has no powers to place the license under suspension by exercising power under sub-clause 2 of clause 28 of the A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980 without initiating enquiry under sub-clause (1) of clause 28 of the A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980 is not correct. The other allegations also had been denied.

13. The counsel on record made certain submissions in the

light of the respective averments made in the pleadings and the affidavit filed in support of the petition as well. The impugned order dated 02-4-2007 issued by the second respondent reads as hereunder:

PROCEDINGS OF THE LICENCING AUTHORITY AND JOINT COLLECTOR, KARIMNAGAR.

Present:- Sri K.Sasidhar, I.A.S.,

No.G3/381/2007. Dated 02-4-2007.

Sub: Civil Supplies – Karimnagar district – Jagtial Mandal – Sri Takur Kiran Singh s/o. Narayan singh, Managing Partner of M/s. Rayancha Prabhkar, Wholesale Kerosene Dealer, (HPC), Jagtial – Contraventions of certain provisions of clause 3 (1), 3 (2), clause 12 (1) (iii), Clause 22 of the A.P. Petroleum Products (Licensing and Regulation of Supplies) Orders, 1980 and conditions 2, 5, 6 (i) (ii) and (ii) of the licence issued thereunder – Pending enquiry into the contraventions – Suspension of licence no.2/81 (Renewed upto 31-12-2008)under clause 28 (2) of the A.P. Petroleum Products (Licensing and Regulation of Supplies) Orders, 1980 – Issued.

Ref: Tahsildar, Jagtial report, dated 23-03-2007.

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O R D E R :

In the reference read above, the Tahsildar, Jagtial has reported that on receipt of credible information about that the PDS kerosene is being diverted into black market from Kerosene tanker at Vanjari wada, Jagtial. He has proceeded to Vanjariwada at Jagtial at about 08:30 p.m. and found an oil tanker bearing No.AER-6117 pertaining to M/s. Rayancha Prabhakar, Wholesale kerosene dealer, (HPC), Jagtial unloading kersosene oil in barrels kept in a private house bearing no.5-4-79. At the time of their visit, Sri Kiran Singh, Managing Partner was

found present, they have noticed six barrels of 22-litres capacity and 5 cans of 20 litres filled with blue kerosene total 1400 litres and on verification of the tanker, they have noticed 1000 litres of kerosene available in the tanker. The Tahsildar, Jagtial has reported that Sri Takur Kiran Singh, Managing Partner of M/s. Rayancha Prabhakr, Wholesale Kerosene Dealer (HPC), Jagtial had contravened the following clauses and conditions of licence granted under the A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980.

1) Clause 3 (1), 3 (2), clause 12 (1) (iii), Clause 22 of the A.P. Petroleum Products (Licensing and Regulation of Supplies) Orders, 1980.
2) Conditions 2, 5, 6 (i) (ii) and (ii) of the licence issued under clause 3 (3) of the A.P. Petroleum Products (L & R S) Order, 1980.

On examining the report of the Tahsildar, Jagtial, it is found that the contraventions cited are grave in nature and requires a thorough investigation and enquiry in the interest of fair inquiry into all the relevant records and examining the various accounts of the business. Thus, it is essential and warrants to suspend the licence of the said wholesale kerosene oil dealer (HPC), Jagtial to conduct detailed enquiry and probe into all the above contraventions to meet the ends of justice.

In view of the above circumstances of the case and pending enquiry into all the above contraventions, the licence bearing no.2/81 (Renewed upto 31-12-2008 granted under clause 3 (3) of the AP Petroleum Products (L&RS) Order, 1980 in favour of M/s. Rayancha Prabhakar, Wholesale dealer (HPC), Jagtial is hereby suspended in exercise of powers conferred under clause 28 (2) of A.P. Petroleum Products (L&RS) Order, 1980 until further orders.

Sd/- K.Sasidhar,
Licensing Authority & Joint Collector
Karimnagar.

// Attested //

Sd/-
District Supply Officer
Karimnagar.

To

Sri Takur Kiran Singh, Managing Partner, M/s. Rayancha Prabhakar, Wholesale Kerosene Dealer (HPC), Jagtial (through the Tahsildar, Jagtial for service and return served copy).

Copy to the Senior Regional Manager, HPC, Hyderabad.

14. The order impugned was made by the second respondent on 02-4-2007 suspending the licence in exercise of the powers conferred under clause 28 (2) of the A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980 [hereinafter referred to for short 'the order'] until further orders. Clause 28 of the said Order dealing with contravention of conditions of licence registration certificate/supply card/provisions of this order, reads as hereunder :

1) No holder of a licence or registration certificate or supply card issued under this order or his agent or servant or any other person act8ing on his behalf shall contravene, attempt or abet the contravention of any of the provisions of this order or any of the conditions of the licence, registration certificate or any direction issued thereunder. If any such holder or his agent or the servant or any person acting on his behalf contravenes any of the said terms or conditions, his licence or registration certificate or supply card may be cancelled or suspended for such period as may be specified by an order in writing by the licensing authority';

Provided that no order shall be made under this clause unless the licensee or the holder of registration certificate has been given a reasonable opportunity for representing his case in writing and

> also having heard in person against the proposed cancellation.
>
> Pending action as in sub-clause (1), above, the licensing authority for reasons to be recorded in writing, order an interim suspension of the licence, registration certificate or supply card.

15. It is needless to say that sub-clause (2) of Clause 28 specifies that pending action in sub-clause (1) of the licence reasons to be recorded in writing ordering interim suspension of the licence/registration certificate for supply card.

16. On a careful reading of the language employed in Clause 28 (1) and (2) of the AP Petroleum Products (Licensing and Regulation Supplies) Order, 1980, it is clear that pending action as in sub-clause (1), the licensing authority for reasons to be recorded in writing, order an interim suspension of the licence, registration certificate or supply card.

17. As can be seen from the impugned order, the report of the Tahsildar and certain other facts had been referred to and it was no doubt recorded that it is essential and warrants to suspend the licence of the wholesale kerosene dealer (HPC), Jagtial and to conduct a detailed enquiry and probe into all the contraventions to meet the ends of justice.

18. But however, as can be seen from the stand taken in the counter-affidavit in para no.4 and also the contentions which had been advanced by the counsel representing the second respondent, the learned Government Pleader for Civil Supplies, it is clear that the action under clause 28 (1) of the Order was not initiated on the self-same day but however the impugned suspension was made in exercise of the powers conferred under clause (2) of Clause 28 of the order referred to supra, until further orders. Reliance was placed on the decision of the Division Bench of this Court in **THE COMMISSIONER OF CIVIL SUPPLIES, GOVT.OF AP HYDERABAD AND ORS. V/s. RADHA AUTOMOBILES, HYDERABAD, REPRESENTED BY ITS MANAGING PARTNER, T. NARENDRA KUMAR** referred supra-1, wherein the Division Bench had an occasion to deal with Section 6-A of Essential Commodities Act and Clauses 28 and 29 of AP Petroleum Products (Licensing and Regulation of Supplies) Order, 1980 held that the impugned order is not legal and it was further held that sub-clause (1) of Clause 29 of the said Order can come into play only if the person has been convicted by a Court of law in respect of any of the provisions of Essential Commodities Act and sub-clause (2) of Clause 28 can be

resorted to only pending action as contemplated in sub-clause (1). In this case, no proceedings have been initiated for prosecuting the dealer nor has any proceeding been initiated under the provisions of Clause 29 of the Order. No action till today has been initiated against the respondent under sub-clause (1) of Clause 28 and therefore neither Clause 28 nor Clause 29, which were resorted to can be invoked by the respondents.

19. In the light of the same, this court is of the considered opinion that the impugned order cannot be sustained. In the light of the legal infirmity referred to supra, accordingly, the writ petition is hereby allowed. However, this order will not come in the way of the second respondent from initiating any appropriate action in accordance with law. No costs.

JUSTICE P . S. NARAYANA .

03 / 9 / 2007

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[1]) 1980 (2) Law Summary page-30